

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OLLIE GREENE, Individually as the
Surviving parent of WYNDELL GREENE,
SR., WILLIAM GREEN, as the
Administrator of the Estate of WYNDELL
GREENE, SR., and MARILYN BURDETTE
HARDEMAN, Individually and as the
Surviving parent of LAKEYSHA GREEN,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., TOYOTA MOTOR SALES USA, INC.,
VOLVO GROUP NORTH AMERICA, IND.,
VOLVO TRUCKS NORTH AMERICA, A
A DIVISION OF VOLVO GROUP
NORTH AMERICA, LLC., STRICK
CORPORATION, INC., JOHN FAYARD
MOVING & WAREHOUSE, LLC and
DOLPHINE LINE, INC.

Defendants.

CAUSE NUMBER 3:11-cv-0207-N

JURY TRIAL DEMANDED

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**DEFENDANT STRICK TRAILERS, LLC'S MOTION FOR LEAVE
TO FILE MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, Strick Trailers, LLC (õStrickö), pursuant to Local Rule 7.1, states as follows
for its Motion for Leave to File Motion for Summary Judgment and Brief in Support of Motion
for Summary Judgment:

Motion For Leave To File Motion for Summary Judgment

On June 19, 2013, this Court entered the Second Amended Scheduling Order (the "Second Scheduling Order") (R.E. 161). The Second Scheduling Order provides for a trial date of March 10, 2014. *Id.* at 1. The Second Scheduling Order also provides that "all motions, including any objections to expert testimony ..." must be filed 90 days prior to the trial date which equates to December 10, 2013. *Id.* at 2. Strick moves this Court for leave to file its Motion for Summary Judgment (the "Motion for Summary Judgment"), Brief in Support of the Motion for Summary Judgment (the "Brief in Support"), and Appendix with exhibits referenced in the Brief in Support (the "Appendix") one day later than the Scheduling Order permits. The Motion for Summary Judgment is attached as **Exhibit 1**. The Brief in Support is attached as **Exhibit 2**. The Appendix is attached as **Exhibit 3**.

Brief in Support

A district court has broad discretion to expand deadlines for filing dispositive motions. *Henderson v. Johnson*, 201 F. Appx 284, 286 (5th Cir. 2006) citing *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 367 (5th Cir.1995). In this case, Strick seeks leave of court to file its Motion for Summary Judgment **one single day** past the Court's deadline of December 10, 2013. The undersigned have not engaged in bad faith, dilatory conduct, or intentionally caused any unnecessary delay.

There have been discovery issues and other disputes that have arisen in this matter that caused this Court to issue an Order amending certain scheduled deadlines regarding expert designations, expert testimony, and objections to expert testimony (the "Amended Scheduling Order") (R.E. 219). The Amended Scheduling Order modifies the Second Scheduling Order and provides an additional 30 days (the "Extension") for the filing of motions related to the (1)

disclosure of experts, (2) disclosure of opposing experts, (3) disclosure of rebuttal experts, and (4) objections any party has to any other party's expert testimony. The Extension did not apply to any other motions and did not apply to the Motion for Summary Judgment Strick seeks to file.

It appears that the undersigned's scheduling calendar was changed to reflect an erroneous filing deadline for the Motion for Summary Judgment based upon the Extension granted in the Amended Scheduling Order. Strick had already been preparing to file the Motion for Summary Judgment for some time prior to the expiration of the December 10, 2013 deadline, but missed that deadline notwithstanding. Plaintiffs will not suffer any prejudice whatsoever if the Court grants the relief requested in the present Motion. The delay of a single day could not meaningfully interfere with Plaintiffs' counsel's ability to respond meaningfully to the merits raised and identified in the Motion for Summary Judgment. The undersigned will also agree to provide Plaintiffs' counsel a reciprocal one-day extension, with the Court's permission, or a longer period if Plaintiff can show cause why such an extension is necessary.

WHEREFORE, Defendant Strick Trailers, LLC, respectfully requests this Court enter an order (1) permitting it to file its Motion for Summary Judgment, Brief in Support, and Appendix one single day later than was permitted by the Second Scheduling Order, (2) to declare the exhibits filed together with this Motion as having been filed with the Court on December 11, 2013, and (3) to grant such other and further relief as this Court deems necessary and just.

Respectfully submitted,

DAWSON & CLARK, P.C.

/s/ Donald H. Dawson, Jr.
DONALD H. DAWSON, JR.
Texas State Bar No. 05606500
KATHLEEN A. CLARK
Texas State Bar No. 00788830
243 West Congress, Suite 600

Detroit, MI 48226
(313) 256-8900 (*Office*)
(313) 256-8913 (*Facsimile*)

WALTERS, BALIDO & CRAIN, LLP

/s/ S. Todd Parks
S. TODD PARKS
Texas State Bar No. 15526520
ASHLEY DE LA CERDA
Texas State Bar No. 24045760
900 Jackson Street, Suite 600
Dallas, TX 75202
(214) 749-4805 (*Office*)
(214) 760-1670 (*Facsimile*)

ATTORNEYS FOR DEFENDANT STRICK

CERTIFICATE OF CONFERENCE

This will certify that the undersigned has conferred with all counsel for parties affected by the requested relief on December 11, 2013. Plaintiff's counsel, Aubrey Nickö Pittman, opposes the relief requested herein and there is a fundamental disagreement regarding the merits of this Motion.

/s/ Donald H. Dawson, Jr.
DONALD H. DAWSON, JR.

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2013, I electronically filed a copy of the foregoing, together with all exhibits, if any, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all CM/ECF participants and I hereby certify that I have mailed by United States Postal Service the document to any non CM/ECF participants.

/s/ Donald H. Dawson, Jr.
DONALD H. DAWSON, JR.